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PATENT  
Docket No. 20344-20257.01

CERTIFICATE OF MAILING BY "FIRST CLASS MAIL"

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:  
Assistant Commissioner for Patents, Washington, D.C. 20231, on April 29, 1996.

*Jennifer L. Taylor*  
Jennifer L. Taylor

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In the application of:

Maassab and Herlocher

Serial No.: 08/573,569

Filing Date: 14 December 1995

For: COLD-ADAPTED INFLUENZA VIRUS

Examiner: A. Caputa

Group Art Unit: 1813

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GROUP 1813

**PETITION UNDER 37 C.F.R. § 1.28(c)(2)**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

In accordance with 37 C.F.R. § 1.28(c)(2), Applicants' undersigned attorney hereby provides notification of the erroneous establishment of small entity status and payment of reduced fees in the above-identified application and its parent application, U.S. Serial No. 08/082,846. Submitted herewith is the deficiency between the amount paid and the total amount due.

Because this deficiency is being paid more than three months after the date the error occurred, provided herein is a statement by Applicants' undersigned attorney indicating how this error occurred.

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The parent application, U.S. Serial No. 08/082,846 was filed on June 29, 1993, by Applicants' prior counsel, Anna Lewak Wight, then of Harness, Dickey and Pierce. Ms. Wight properly established small entity status for the parent application on February 28, 1994 by the filing of a Verified Statement Claiming Small Entity Status. Ms. Wight then became associated with Morrison & Foerster and responsibility for the application transferred with her. On June 6, 1994, Ms. Wight filed a paper noticing the Office of the loss of the right to claim small entity status in the parent application. However, this paper was not properly maintained with the application file.

Prior to the issuance of the first Office Action, Ms. Wight left Morrison & Foerster and the undersigned attorney assumed responsibility for the continued prosecution of the parent application. At that time, small entity status again was proper for the application. The undersigned filed correspondence with the Office incorrectly assuming that the right to claim small entity status had never been lost and was unaware that a paper noticing the Office of the change in status had been filed in the parent application. Without knowledge of the loss of small entity status and without deceptive intent, small entity fees were paid in good faith. A deficiency in fees in a total amount of \$1455.00 was not paid in the parent and the subject application. A check in this amount is therefore enclosed.

The error was discovered on March 6, 1996, when the undersigned was reviewing documentation relating to this application. Subsequently, Verified Statements Claiming Small Entity Status were filed on April 17, 1996 in connection with the above-identified application. As a result, small entity status is now established and proper for this application.

Accordingly, the error in payment of the fees was made without deceptive intent.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorize the Assistant Commissioner to

charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952 (Our Ref. 20344-20257.01).**

Dated: April 29, 1996

Respectfully submitted,

By: *Antoinette F. Konski*  
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